

R E M A R K S

The Office Action of June 14, 2007 has been reviewed and its contents carefully noted. Reconsideration of this case, as amended, is requested. Claims 1, 3-5, 7-8, 10-12, 14-17, and 24-25 remain in this case, claims 1, 3-5, 7-8, 10-12, and 14-16 being amended, claims 9 and 19-23 being cancelled, and claims 24-28 being added by this response. No new matter has been added by these amendments. Specifically:

Claims 1, 3-5, 7-8, and 10-12 were amended to overcome the indefiniteness rejections and are supported by claims 1, 3-5, 7-8, and 10-12, respectively, as filed.

Claim 14 is supported by claim 2 as filed.

Claim 15 is supported by claim 3 as filed.

Claim 16 is supported by claim 4 as filed.

New claim 24 is supported by claim 1 as filed and page 9, lines 9-10 of published PCT application WO/03/055972 A1 to which the present application claims priority.

New claim 25 is supported by claims 7 and 9 as filed.

Rejection under 35 U.S.C. §112

Claims 1, 3-5, 7-12, and 14-23 were rejected under section 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3-5, 7-8, 10-12, and 14-16 were amended and claims 9 and 19-23 were cancelled by the present response. Applicant believes that these amendments have fully addressed the Examiner's rejections, and the claims are now in condition for allowance. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejections under 35 U.S.C. §103

Claims 1, 3-5, 7-8, and 14-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sitterli (DE 4,422,190) in view of Ribereau-Gayon *et al.* (HANDBOOK OF ENOLOGY). Applicant respectfully disagrees with the rejection.

Amended independent 1 includes, in part, "maintaining a constant pressure in the air-tight space from a time of completion of the fermentation, through storage and transportation of the beverages, until a time of final consumption of the beverages".

Sitterli teaches a re-usable bottle stopper or container stopper and dispensing device for re-usable bottles. Sitterli teaches use of the stopper in the production of champagnes, sparkling wine and other alcoholic refreshments in accordance with the method of "fermentation by bottle or container" or for adding carbon dioxide to bottle or container. The Examiner admits that Sitterli does not teach maintaining a constant pressure. The Examiner states that "[s]ince constant pressure is an important measure in a sparkling alcoholic beverages production, one of ordinary skill in the art would have been motivated to use 'shifting' of carbon dioxide as disclosed by Sitterli in order to keep constant pressure" [page 4, lines 7-10, present office action dated June 14, 2007]. The Examiner has failed to provide any evidence that 1) constant pressure is important in beverage production or 2) that 'shifting' as taught by Sitterli is capable of maintaining a constant pressure from a time of completion of the fermentation, through storage and transportation of the beverages, until a time of final consumption of the beverages. Therefore, it is respectfully suggested that the Examiner has failed to make a prima facie case for obviousness for this feature of claim 1.

Ribereau-Gayon does not provide what Sitterli lacks. Ribereau-Gayon teaches champagne method bottle fermentation. Ribereau-Gayon teaches time and again opening the container for carrying out different production steps, which causes pressure changes in the container. Ribereau-Gayon does not teach or suggest maintaining a constant pressure in the air-tight space from a time of completion of the fermentation, through storage and transportation of the beverages, until a time of final consumption of the beverages.

Neither Sitterli nor Ribereau-Gayon, alone or in combination, teach or suggest Applicant's amended independent claim 1. Therefore, it is respectfully suggested that independent claim 1 is not obvious over Sitterli in view of Ribereau-Gayon. Reconsideration and withdrawal of the rejection of claim 1 are respectfully suggested.

Amended dependent claim 5 states, in part, "the pure yeast culture is immobilized *prior to addition to the base mix*" (emphasis added)

Regarding claim 5, the Examiner states that "the base mix for champagne and sparkling beverages is prepared by mixing sugar and yeast solution with blend of wines and further immobilizing yeast (As evidenced by Ribereau-Gayon et al, pp 421-422)" [page 4, lines 14-16, present office action dated June 14, 2007].

The step of immobilization of the pure yeast culture, as described in claim 5, occurs prior to its addition to the container. The use of immobilized yeast simplifies the production by eliminating the need to filter the yeast from the product.

Sitterli teaches a filter housing (8) and microfilters (9) for filtering yeast from the product. Sitterli does not teach or suggest immobilizing the pure yeast culture prior to addition to the product.

Ribereau-Gayon does not provide what Sitterli lacks. In contrast to the Examiner's assertion, Ribereau-Gayon teaches a free yeast culture and addition of bentonite for yeast extraction. Ribereau-Gayon teaches settling of the yeast culture in the container. Ribereau-Gayon also teaches the step of filtration, which indicates that the yeast is not immobilized. Ribereau-Gayon does not teach or suggest immobilizing the pure yeast culture prior to its addition to the container.

Neither Sitterli nor Ribereau-Gayon, alone or in combination, teach or suggest Applicant's amended claim 5. Therefore, it is respectfully suggested that claim 5 is not obvious over Sitterli in view of Ribereau-Gayon.

Dependent claims 3-5 and 7-8, as well as new claims 24 and 25, being dependent upon and further limiting independent claim 1, should also be allowable for that reason, as well as for the additional recitations they contain. Reconsideration and withdrawal of the rejection of claims 3-5 and 7-8 are respectfully requested.

Amended independent claim 14 includes, in part, "maintaining a constant pressure in the air-tight space during carbonation, storage and transportation until a time of final consumption of the beverages".

Sitterli teaches a re-usable bottle stopper or container stopper and dispensing device for re-usable bottles. Sitterli teaches use of the stopper in the production of champagnes, sparkling wine and other alcoholic refreshments in accordance with the method of "fermentation by bottle or container" or for adding carbon dioxide to bottle or container. The Examiner admits that Sitterli does not teach maintaining a constant pressure. The Examiner states that "[s]ince constant pressure is an important measure in a sparkling alcoholic beverages production, one of ordinary skill in the art would have been motivated to use 'shifting' of carbon dioxide as disclosed by Sitterli in order to keep constant pressure" [page 4, lines 7-10, present office action dated June 14, 2007]. The Examiner has failed to provide any evidence that 1) constant pressure is important in beverage production or 2) that 'shifting' as taught by Sitterli is capable of maintaining a constant pressure from a time of completion of the fermentation, through storage and transportation of the beverages, until a time of final consumption of the beverages. Therefore, it is respectfully suggested that the Examiner has failed to make a prima facie case for obviousness for this feature of claim 14.

Ribereau-Gayon does not provide what Sitterli lacks. Ribereau-Gayon teaches champagne method bottle fermentation. Ribereau-Gayon teaches time and again opening the container for carrying out different production steps, which causes pressure changes in the container. Ribereau-Gayon does not teach or suggest maintaining a constant pressure in the air-tight space from a time of completion of the fermentation, through storage and transportation of the beverages, until a time of final consumption of the beverages.

Neither Sitterli nor Ribereau-Gayon, alone or in combination, teach or suggest Applicant's amended independent claim 14. Therefore, it is respectfully suggested that independent claim 14 is not obvious over Sitterli in view of Ribereau-Gayon. Dependent claims 15-17, being dependent upon and further limiting independent claim 14, should also be allowable for that reason, as well as for the additional recitations they contain. Reconsideration and withdrawal of the rejection of claims 14-17 are respectfully requested.

Claims 9-12 and 20-23 were rejected under 35 USC § 103 as being unpatentable over Sitterli (DE 4,422,190) in view of Ribereau-Gayon *et al.* (HANDBOOK OF ENOLOGY) and further in view of Johnston (US 3,438,553). Applicant respectfully disagrees with the

rejection. The arguments regarding the nonobviousness of claim 1, upon which claims 10-12 depend, over Sitterli in view of Ribereau-Gayon are repeated here by reference.

Amended independent 1 includes, in part, "maintaining a constant pressure in the air-tight space from a time of completion of the fermentation, through storage and transportation of the beverages, until a time of final consumption of the beverages".

Johnston does not provide what Sitterli and Ribereau-Gayon lack. Johnston teaches a tapping device for a beer keg including an adapter semi-permanently installed in the keg at the brewery. Johnston does not teach or suggest maintaining a constant pressure in the air-tight space from a time of completion of the fermentation, through storage and transportation of the beverages, until a time of final consumption of the beverages.

Neither Sitterli nor Ribereau-Gayon nor Johnston, alone or in combination, teach or suggest Applicant's amended independent claim 1. Therefore, it is respectfully suggested that independent claim 14 is not obvious over Sitterli in view of Ribereau-Gayon and further in view of Johnston. Dependent claims 10-12, as well as new claim 25, being dependent upon and further limiting independent claim 1, should also be allowable for that reason, as well as for the additional recitations they contain. Reconsideration and withdrawal of the rejection of claims 10-12 are respectfully requested.

Conclusion

Applicant believes the claims, as amended, are patentable over the prior art, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

Respectfully Submitted:
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